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104. (Amended) The screw of claim 86 wherein the head is provided with a top surface having a [#2] square opening.

**REMARKS**

**SUMMARY**

The drawings have been objected to under 37 C.F.R. §1.83(a) wherein it has been asserted that the drawings do not show every feature of the invention specified in the claims. New Figure 1A has been proposed. Figure 1A shows more clearly the inverted buttress thread arrangement. Figure 1A adds no new matter. The specification has been amended at page 4 and page 5 to reference Figure 1A and reference numeral 50 has been included as reference to the buttress thread arrangement. These amendments add no new matter. Applicants respectfully point out that the claims have been amended to recite a square opening, and that Figure 3, reference numeral 24, clearly shows a square opening in the top surface of an embodiment of the invention. No new matter has been added.

**Claim Rejections Under 35 U.S.C. §112, Second Paragraph**

Claims 18, 19, 29, 41, 47, 54, 63, 74-79, 87-92, 100-105, and 113-118 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 18 and 19 have been amended. As amended, claims 18 and 19 depend on claim 12, as such the amendment addresses the Examiner's comment.

Claims 19, 29, 41, 47, 54, 63, 74-79, 87-92, 100-105, and 113-118 have been rejected wherein it is asserted that a #2 square opening is not recognized as being a term in the art. Applicant has deleted without prejudice to later filing claims 105, and 114-118. As such, the 35 U.S.C. §112 second paragraph rejection does not apply to the deleted claims. As to the remaining claims,

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Applicants respectfully point out that as amended, a square opening is a term recognized in the art. Applicants cite to Dreger (U.S. Patent No. 5,020,954) column 5, lines 15-47. Specifically, at line 16, Dreger refers to a standard square driver. Applicants respectfully point out that a square driver is shown to be inserted into a square opening located in the screw head in at least Figure 6B. As such, a square opening is clearly a recognized term in the art, and the 35 U.S.C. §112, second paragraph rejection should be withdrawn.

**Claim Rejections Under 35 U.S.C. §102**

Claims 1, 3-8, 11, 45, 48, 51, 52, 55, 58-60, 61, 64, and 67 have been rejected under 35 U.S.C. §102(b) as being anticipated by Takasaki (U.S. Patent No. 6,000,892). The courts have a long history of consistently holding that "to anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently." In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As also stated in re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) (quoting Hansgirk v. Kemmer, 102 F.2d 212, 214, 40 USPQ 665, 667 (CCPA 1939)). Further, a prior art reference may anticipate when the claim limitation or limitations not expressly found in that reference are nonetheless inherent in it. See In re Oelrich, 666 F.2d at 581; Verdegaal Bros., Inc. v. Union Oil Co. of Cal., 814 F.2d 628, 630, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). However, a rejection based on anticipation is not proper if the prior art does not necessarily function in accordance with, or include, the claimed limitations, it is asserted to anticipate. See In re King, 801 F.2d 1324, 231 USPQ 136, 138 (Fed. Cir. 1986).

**Rejection Of Claims 1, 45, 52 And 59 As Anticipated By Takasaki Is Improper**

Independent claims 1, 45, 52 and 59 have been amended to include a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. A rejection of claims 1, 45, 52 and

59 and those claims that depend either directly or indirectly on claims 1, 45, 52 and 59 is improper for at least the reason that the Takasaki reference does not disclose either expressly or inherently a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. Applicants respectfully point out that the Examiner at page 7 of the Office Action has confirmed this position with the statement that "Takasaki fails to disclose... the cross sectional area of the shaft in the upper region being greater than the lower region".

Additionally, it is respectfully pointed out that the Takasaki reference states at column 1, lines 49-55 that the shank has a "straight portion". This statement in the Takasaki reference shows among other things that Takasaki does not teach or suggest a shaft with a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region, and in fact teaches away from such a feature. Therefore, on at least this basis the claimed invention is non-obvious with regard to Takasaki.

**Rejection of claims 1, 2, 9, 12, 13, 20, 23, 30 and 33 as Anticipated by Hsing is Improper**

Claims 1, 2, 9, 12, 13, 20, 23, 30 and 33 have been rejected under 35 U.S.C. §102(b) as being anticipated by Hsing (U.S. Patent No. 6,045,312) wherein Hsing is asserted to include a shaft having a "cross sectional area of the shaft in the upper region being greater than the cross sectional area of the shaft in the lower region". Office Action Page 4.

Applicant respectfully disagrees with the assertion that Hsing discloses a screw wherein the cross sectional area of the shaft in the upper region is greater than that of the shaft in the lower region. The Hsing reference, column 2, at lines 4, 7, 13, 21, 25, 37, and 46 states that the shank is "generally cylindrical". Figure 1, and Figure 3 of the Hsing reference clearly show the "generally cylindrical" shank 22 to have primary threads 100 with the threads having a generally uniform radial dimension. Hsing, column 4, lines 5-24. The Hsing reference makes it clear that the shank 20 and the threads 100, and 120 are separate

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elements. The thread dimensions are in part determined by reference to the shaft, wherein the "radial dimension of each thread formation is measured radially from the thread root". Hsing, column 2 lines 9-10. It is clear from at least these statements that the shank of Hsing is to have uniform and parallel sides. Applicants additionally point to Figure 1 and Figure 3 of the Hsing reference having sets of reference lines running parallel to the shank portion 22 demarcating the primary thread contour. The Hsing reference clearly does not either expressly or inherently disclose at least the claimed feature of a shaft with a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region, and therefore a 35 U.S.C. §102(b) rejection can not be properly made against claims 1, 2, 9, 12, 13 20, 23, 30 and 33.

Furthermore and in addition to the fact that the Hsing reference clearly does not teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region, incorporation of a cross sectional difference into the Hsing shank would defeat the "unique" thread formation and fastening torque profile that Hsing requires. Hsing, column 1 lines 14-63. See also: Hsing discussing the secondary threads having an increasing radial dimension from their origin toward the head region in order to "cut deeply into the substrate 60 whereby minimum stripping torque tends to be much greater compared to what the stripping torque would have been if the secondary thread formation were admitted". Hsing column 4, lines 36-39. To modify Hsing as suggested in the Office Action would defeat the basis operating principle under which the Hsing invention operates and would require a substantial reconstruction and redesign of Hsing. This reconstruction and redesign has long been established to preclude a rejection under 35 U.S.C. §103. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The claimed invention is therefore non-obvious for at least this additional reason.

**Claim Rejections Under 35 U.S.C. §103**

Claims 10, 21, 31, 34, 35, 42, 43, 68, 80, 94, and 106 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hsing as applied to claims 1, 12 and 23 in view of De Caro (U.S. Patent No. 4,959,938).

To establish a *prima facie* case of obviousness three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

As thoroughly discussed in recent court holdings "...the essential factual evidence on the issue of obviousness is set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) and extensive ensuing precedent. The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See, e.g., McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) ("the central question is whether there is reason to combine [the] references," a question of fact drawing on the Graham factors)." In re Lee, 61 USPQ2d, 1430 (Fed. Cir. 2002).

The expectation of success is not whether it would have been obvious to try a modification or combination. Gillette Co. v. S.C. Johnson & Son, Inc., 919 F.2d 720, 725 (Fed. Cir. 1990).

A prior art reference or combined references must teach or suggest all of the limitations of a claim to be prior art under §103. In re Wilson, 165 USPQ 494, 496 (C.C.P.A. 1970).

**Rejection of Claims 10, 21, 31, 34, 35, 42, 43, 68, 80, 94, and 106 Improper**

It is a well-established "general rule" that references that teach away cannot serve to create a *prima facie* case of obviousness. In re Gurley, 27 F3d 551, 553, 31 USPQ2d 1131, 1132 (Fed. Cir. 1994). A "reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." Winner Int'l Royalty Corp. v. Wang, 202 F.3d 1340 (Fed. Cir. 2000) citing Gurley at 553; Monarch Knitting Machinery v. Sulzer Morat GmbH, 139 F.3d 877, 882 (Fed. Cir. 1998).

The De Caro reference expressly teaches and suggests a line of development flowing toward fastener/plate assemblies. The assembly has a fastener and plate used together to accomplish the objects set forth in De Caro. This clearly is a line of development unlikely to be productive in achieving the result of among other things eliminating substrate displacement as sought by the Applicants. As such, De Caro teaches away from the claimed invention. Winner, citing Gurley at 553; Monarch Knitting Machinery, at 882. Therefore, the rejection under 35 U.S.C. §103 is improper.

**Rejection of Claims 10, 21 and 31 Improper**

As discussed above, the Hsing patent does not properly serve as a basis of rejection for claims 1, 12 and 23. Therefore, dependent claims 10, 21 and 31 are not properly rejected using the Hsing reference since Hsing does not teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region.

**Rejection Of Claims 34 Improper**

Claim 34 has been amended to include a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region and therefore, as stated above, the Hsing reference does not serve as a proper basis of rejection for claim 34 for at least the reason that Hsing does

not teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region.

Claim 43 has been deleted without prejudice to later filing. As such, the rejection has been obviated as to this claim.

**Rejection of Claims 42 Improper**

Claim 42 depends directly on claim 34. Therefore, rejection as to claim 42 is improper for at least the reason that Hsing does not teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region.

**Rejection of Claims 68 Improper**

Rejection of claim 68 is improper since claim 68 recites in a pertinent part the cross sectional area of the shaft in the upper region is greater than the cross sectional area of the shaft in the lower region and therefore for at least the reason that Hsing does not teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region, claims 68 is not properly rejected using the Hsing reference.

**Rejection of Claims 80 Improper**

Claim 80 depends on claim 68 and is non-obvious for at least the reason that Hsing does not teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region.

**Rejection of Claims 94 Improper**

Claim 94 recites the shaft wherein the cross sectional area of the shaft in the upper region is greater than the cross sectional area of the shaft in the lower region, and a rejection of claim 94 under § 103 is improper for at least the reason that Hsing does not teach or suggest a shaft having a cross sectional area in the

upper region greater than the cross sectional area of the shaft in the lower region.

**Rejection of Claims 106 Improper**

Claim 106 depends from claim 94. As stated above, the Hsing reference does not properly serve for a rejection of claim 94 for at least the reason that Hsing does not teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. Therefore, a rejection of claim 106 is improper.

**35 U.S.C. §103(a) Rejection of Claims 50, 57, and 66 Improper**

Claims 50, 57, and 66 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Takasaki as applied to claims 45, 52 and 59 in further view of De Caro.

Claim 50 depends from claim 45, which has a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. The Takasaki reference does not teach or suggest at least this claimed feature, and therefore a proper rejection under 35 U.S.C. §103 does not apply.

Claim 57 depends directly from amended claim 52. Claim 52 recites in a pertinent part a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. As such, a rejection of claim 57 is improper under 35 U.S.C. §103.

Claim 66 depends from claim 59 having a shaft with a cross sectional area in the upper region greater than the cross sectional area in the lower region, and therefore a proper rejection under §103 does not apply for at least the reason that Takasaki does not teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region.

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**35 U.S.C. §103(a) Rejection of Claims 14-18, 22, 24-28, and 32 Improper**

Claims 14-18, 22, 24-28, and 32 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hsing reference as applied to claims 1 and 23 in view of Takasaki.

As discussed above, the Hsing reference has been improperly applied as to claims 1 and 23 for at least the reason that Hsing does not teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. Furthermore, in the rejection it is stated that "Hsing fails to disclose a bottom surface having a V-shaped undercut, the undercut having a conical surface that connects the lip with the conical side of head. . . ". It is then asserted that Takasaki teaches all of these features of the head and that it would have been obvious at the time the invention was made to a person of ordinary skill in the art to add the features of the Takasaki head to the Hsing screw.

Applicants respectfully assert that the modification or combination asserted in the Office Action is taught directly against in the Hsing reference and a rejection under 35 U.S.C. §103 is therefore improper for at least the well-established "general rule" that references that teach away cannot serve to create a *prima facie* case of obviousness. Winner v. Wang. The bottom surface in the Hsing reference is referred to as a clamping surface 84, and comes into contact with the surface 50. The Hsing reference at column 1, lines 21-29, states that a clearance hole is formed in the piece to be fastened through which the shank may pass freely. It is clear that a conical sided head in the modified Hsing reference would cause deformation in the piece to be fastened from the penetration of the conical head into the piece. Furthermore, a significant change to the torque time profile, as disclosed in Figure 2B would occur. For at least these reasons, there is clearly a teaching away from the modification or

combination asserted in the Office Action, and a rejection under 35 U.S.C. §103 is improper.

In addition, the configuration suggested by the modification in the Office Action of incorporating at least a conical sided head would require a substantial reconstruction and redesign of the elements shown in the Hsing reference as well as a change in the basic principle under which the Hsing construction was designed to operate and is improper for at least this additional reason. See In re Ratti, 270 F.2d 813, 123 USPQ 352 (CCPA 1959).

**35 U.S.C. §103(a) Rejection of Claims 46, 49, 53, 56, 62 and 65 Improper**

Claims 46, 49, 53, 56, 62 and 65 have been rejected under 35 U.S.C. §103 as being unpatentable over the Takasaki reference as applied to claims 45, 52 and 59 in view of Hsing. The rejection states that "Takasaki fails to disclose the upper region having twice as many threads per unit length than the lower region and the cross sectional area of the shaft in the upper region being greater than the cross sectional area of the shaft in the lower region". It further states that the Hsing patent discloses "both these features".

As discussed above, the Hsing and Takasaki references do not teach or suggest at least a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region, therefore, a proper rejection under 35 U.S.C. §103 has not been made.

**35 U.S.C. §103(a) Rejection of Claims 19 and 29 Improper**

Claims 19 and 29 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hsing, as applied to claims 12 and 23 above in further view of Dreger '954 patent. It is asserted that Hsing fails to disclose the top surface of the head being provided with a #2 square opening and that Dreger teaches a screw with a head having a #2 square opening for accommodating a #2 Robinson driver. Also, it would have been obvious at the time the invention was made to modify Hsing by adding a #2 square opening in the head as disclosed in

Dreger by a person of ordinary skill in the art. As discussed above, the Hsing reference fails to teach or suggest at least a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region and for at least the reason all the claimed elements are not present, a proper rejection under 35 U.S.C. §103 can not be made.

**35 U.S.C. §103(a) Rejection of Claims 47, 54, and 63 Improper**

Claims 47, 54, and 63 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Takasaki as applied to claims 45, 52 and 59 in further view of Dreger. It is asserted that the Takasaki reference fails to disclose a top surface of the head being provided with a #2 square opening and that it would have been obvious to at the time the invention was made to the person of ordinary skill in the art to modify Takasaki screw by adding a #2 square opening as disclosed in Dreger.

Claims 45, 52, and 59 have been amended to include a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. Claims 47, 54, and 63 are respectively dependent directly from those claims and are patentable for at least the reason that Takasaki does not at least teach or suggest a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region as discussed above.

**35 U.S.C. §103(a) Rejection of Claims 36-40, 44, 69-73, 81-86, 93, 95-99, 107-112, and 119 Improper**

Claims 36-40, 44, 69-73, 81-86, 93, 95-99, 107-112, and 119 have been rejected under 35 U.S.C. §103 as being unpatentable over Hsing and De Caro as applied to claims 34, 68 and 94 in further view of Takasaki. It is asserted that it would have been obvious at the time the invention was made to a person of ordinary skill in the art to add the features of the head and tip in Takasaki to the Hsing screw as modified by De Caro. In addition, it was asserted that the De

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Caro teaches a screw having an upper region with an inverted buttress configuration to secure the screw into the surface.

The Takasaki reference is specific in stating that the first thread angle is smaller than the second thread angle, at column 1, lines 59-60. It is well known in the art (see GE Plastics enclosure) that a buttress thread has a surface which is substantially perpendicular to the central axis of a fastener. As such, to provide a first thread angle which is smaller than the second thread angle wherein the second thread angle would be located in the upper region would be improper based on at least the Takasaki requirement that the first thread angle not more than 45 degrees and second thread angle be equal to or greater than 80 degrees. Takasaki, column 2, lines 23-68. Therefore, a proper rejection under 35 U.S.C. §103 does not stand for at least the reason that there is no motivation or suggestion to modify the Takasaki reference as suggested in the Office Action.

In addition, claims 36-40, and 44 depend on claim 34, claims 69-73, 81-86, 93, 95-99 depend on claim 68, and claims 107-112, and 119 depend on claim 94. Claims 34, 68, and 94 have at least a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. As discussed above, not taught or suggested in the combination asserted in the rejection, is a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. For at least this additional reason, a 35 U.S.C. §103 rejection is improper as to claims 41, 74 and 100.

**35 U.S.C. §103(a) Rejection of Claims 41, 74, and 100 Improper**

Claims 41, 74, and 100 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hsing and De Caro as applied to claims 34, 68, and 94 in further view of Dreger. Stated above, the Hsing and De Caro combination may not be correctly applied to claims 34, 68 and 94. As such, a rejection under 35 U.S.C. §103(a) of claims 41, 74, and 100 is improper.

**35 U.S.C. §103(a) Rejection of Claims 75-79, 88-92, 101-104 and 114-117 Improper**

Claims 75-79, 88-92, 101-104 and 114-117 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hsing, De Caro and Takasaki as applied to claims 34, 36-40, 68-73, 81-86, 93-99, and 107-112, further in view of Dreger. As stated above, claims 98, 111, and 112 have been deleted without prejudice to later filing. Therefore, a rejection under 35 U.S.C. §103(a) is obviated. As discussed above, the Hsing reference modified by De Caro and Takasaki combination is improper for at least the reasons stated above, wherein the asserted combination does not have a shaft having a cross sectional area in the upper region greater than the cross sectional area of the shaft in the lower region. Furthermore, modification of the Hsing head configuration by Takasaki defeats the purpose of the Hsing invention. For at least these reasons, a proper rejection under 35 U.S.C. §103 has not been made.

**35 U.S.C. §103(a) Rejection of Claims 87, 105, 113 and 118 Improper**

Claims 87, 105, 113 and 118 have been rejected under 35 U.S.C. §103 as being unpatentable over Hsing, De Caro and Dreger as applied to claims 34, 41, 68, 74, 94 and 100 in further view of Takasaki.

Claims 105 and 118 have been deleted without prejudice to later filing. Therefore, any rejection under 35 U.S.C. §103(a) is obviated.

As discussed above, the combination of Hsing, De Caro, and Dreger is improper as applied to claims 34, 41, 68, 74 94, and 100. Therefore, a proper rejection under 35 U.S.C. §103(a) for claims 87, and 113 does not exist.

**Use Of Kaneko United States Patent No. 5,863,167 In A Rejection Would Be Improper**

The claimed invention is additionally not anticipated and is non-obvious with regard to the Kaneko reference since there is at the minimum no suggestion or motivation present in the teaching or disclosure of Kaneko, or within the

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knowledge of one of ordinary skill in the art as evidenced by, at least, the references cited in the Office Action, to do what the Applicants have done in the claimed invention.

As thoroughly discussed in recent court holdings "...the essential factual evidence on the issue of obviousness is set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) and extensive ensuing precedent. The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See, e.g., McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) ("the central question is whether there is reason to combine [the] references," a question of fact drawing on the Graham factors)." In re Lee, 61 USPQ2d, 1430 (Fed. Cir. 2002) Such a rigorous examination required by law clearly would find the claimed invention non-obvious based on at least a study of the problem to be solved by the Applicants, and the functionality of the claimed invention related to the prior art.

Applicants note that the Examiner has cited Kaneko with "particular interest to show cross sectional area of the upper and lower regions of the shaft of the screw being different". The Kaneko reference, at column 1, at line 64, requires at least a "tapered thread part" in a portion of the screw shank which is not the tip. The Kaneko reference also does not at least disclose, teach or suggest an upper region, where the number of threads per unit length exceeds the lower region.

Additionally, the Kaneko reference at least specifically requires features of a numerous nature that are directed towards the need for resistance in hammering the screw fastener, of drilling into metal as to not damage a bottom surface of a board into which it is fastened.

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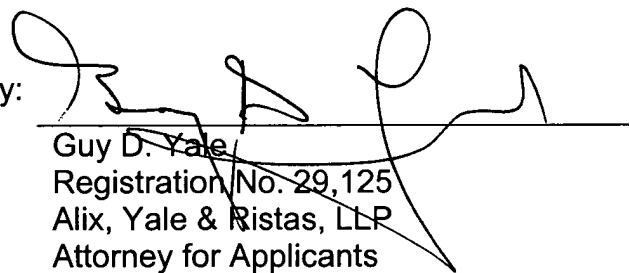
Furthermore, the Kaneko reference is of non-related art, non-analogous art wherein it is not in the same field as the endeavor of the claimed invention, and is not reasonably pertinent to particular problem solved by the inventor.

In summary, Applicants have addressed each of the rejections within the present Office Action. It is believed the application now stands in condition for allowance, and prompt favorable action thereon is earnestly solicited.

Respectfully Submitted,

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